IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3461 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VEDVA VAGRI BHAGWAN DHARSHI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR AJ DESAI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 18/01/2000

ORAL JUDGEMENT

#. Heard Ms.Subhadra Patel, learned advocate for the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1,2 & 3.

#. The detention order dated 20-4-99 passed by

respondent No.2 - The District Magistrate, Bhavnagar against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-B interalia indicates that in all 8 criminal cases of the offence made punishable under the Bombay Prohibition Act were registered against the petitioner at Palitana Town police stations in between 13-1-98 to 19-3-99. That in each case, the country made liquor was seized from the possession of the petitioner / detenu. That out of all 8 cases, 6 cases are pending for trial whereas the two remaining cases are pending for investigation. Furthermore, 3 witnesses on assurance of anonymity have given statement dated 10-4-99 in respect to bootlegging activities of the petitioner which refers to statement relate to alleged incidents dated 1-4-99 and 28-3-99. The witness No.2 has given approximate time and not the date. That on the basis of said material, the respondent No.2 as the detaining authority has come to the conclusion that the petitioner / detenu is bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being not sufficient to prevent the petitioner from continuing his prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. It has been contended on behalf of the petitioner at bar that the privilege claimed by the detaining authority under Section 9(2) of PASA in respect to 3 anonymous witnesses cannot be said to be genuine as the copies of the said statements supplied to the detenu does not disclose any such fact having been verified by respondent No.2 as detaining authority before passing the impugned order.

#. In the matter of JAKIRBHAI RAHIMBHAI NAGORI VS. THE DISTRICT MAGISTRATE, MEHSANA AND OTHERS reported vide 1996 (1) GLH 300, this Court having referred to the observations made by the Division Bench in the matter of KOLI ASHWIN VS. STATE OF GUJARAT in Special Criminal Application No : 1812 of 1993 decided on 12th September, 1994 has held that mere endorsement of verification and signing by the detaining authority without any fact reflecting either in the grounds of detention or contemporaneous record cast a doubt on the genuineness of privilege claimed under Section 9(2) of PASA and thereby,

the detenu being prevented from making effective representation, the mandate of Article 22(5) of the Constitution of India, having been violated, the detention order is rendered invalid.

#. In the instant case, the petitioner has produced the copies of the statement given by the anonymous witness supplied to the detenu which is at Page No : 15 to 23. Perusal of the said documents clearly discloses that respondent No.2 - the District Magistrate, Bhavnagar as detaining authority has merely signed the same. That nothing is stated in the statement as to subjective satisfaction regarding fear expressed by the witnesses in disclosing their identity to claim privilege under Section 9(2) of the PASA. However, in the grounds of detention, the detaining authority has stated that he himself has called the said witnesses and was satisfied. It is noteworthy that the District Magistrate has filed an affidavit dated 27th August, 1999, wherein, he has reiterated the fact that he has called the witnesses personally and verified the facts in para 7 of the affidavit. However, the documentary evidence of contemporaneous record does not support the statements, even it is made on oath and as such, it is difficult to accept the same in the facts and circumstances of the case.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 20-4-99 passed by respondent No.2 - The District Magistrate, Bhavnagar against the petitioner is hereby quashed and set aside. The petitioner - Vedva Vagri Bhagwan Dharshi is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 18-1-2000 [A.K.Trivedi, J.]

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